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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1964

No.

MENDO WOOD PRODUCTS, INC.,
Petitioner,
vs.
ALBERT MULDER, ROBERT B. RIDDLE, and ARTHUR O. WOODALL,
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

to the District Court of Appeal of the State of California First Appellate District, Division Two

The facts and applicable law in this case are uncomplicated and can be simply stated. It is now nearly two years since the trial court's decision, and justice should not be further delayed. There is no federal

question of substance and the rules and decisions of the Supreme Court clearly indicate that cases of this nature are not of interest.

This action was commenced by three laborers, truck drivers, to recover time and one-half as provided by the Fair Labor Standards Act of 1938 (29 USCA 201-219) instead of mere straight time. The defense has now filtered down to a claim of exemption to the Act last cited because of a provision in the Motor Carrier Act of 1935 (49 USCA Part II). The State concluded that the facts failed to show interstate commerce to the extent required to bring a case within the purview of the Motor Carrier Act; hence the Act did not apply, and the exemption therein did not apply. Therefore, judgment had to be for the truck drivers.

Petitioner propounds three questions for the Supreme Court (Petitioner's brief, pages 4-5) but then readily admits "they really fall into a single category" (page 18) and "the single question propounded . . ." (page 19) "is the interpretation by the California courts of its own law . . . Or, as we here assert, disregard or disobey or fail to observe the laws of the State of California . . ." (page 24)

What petitioner keeps repeating on the pages last referenced is a charge that the state courts failed to properly weigh or apply the evidence, and particularly that the findings were not as detailed as petitioner believes was required under state law.

Petitioner makes no reference to and cites no authorities or any question of federal law, and nowhere

contends that any error of law was committed; all petitioner says is that a different view of the evidence, or a more complete set of findings, might justify a different judgment.

Supreme Court Rule 38-5(a) (28 USC 67) provides that a Writ of Certiorari may issue only

> "Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with the applicable decisions of this court."

Petitioner makes no attempt to bring itself within this rule.

28 USCA 1257 (upon which petitioner relies), page 147 et seq., note 69 et seq., refers to numerous authorities holding that the Supreme Court is not interested in local procedure or state practice. The rule is set out in 36 C.J.S. 740 thusly:

> ". . . the United States Supreme Court may not review the decisions of state courts as to questions of state practice or procedure or the sufficiency, construction, etc., of pleadings, and this is the rule even though the action is brought under a federal statute."

Thus we conclude that the Supreme Court is not going to inject itself into the question of what view the state courts should have taken of the evidence, the extent of the findings required by the laws of California, nor the interpretation of state laws by the state courts.

Each contention made by petitioner was discussed by the court to which petitioner would have the writ issue. The principal, if not sole, contention relative to inadequacy of the findings was covered by this language:

> "The first of these arguments is without merit, since, as above noted, respondents supported their wage claims by time cards covering their total periods of employment during 1959 and 1960 and by itemized computations based upon those time cards."

That the findings were sufficient can hardly be more eloquently or conclusively stated than to point to the denial of a hearing by the State Supreme Court.

Dated, Ukiah, California,
September 1, 1964.

Respectfully submitted,
DAVID L. LUCE,
Attorney for Respondents.

THOMAS L. CLELAND,
Of Counsel.